

108TH CONGRESS  
2D SESSION

# H. R. 5257

To provide that members of the Armed Forces and Selected Reserve may transfer certain educational assistance benefits to dependents, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2004

Mr. BARTLETT of Maryland introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide that members of the Armed Forces and Selected Reserve may transfer certain educational assistance benefits to dependents, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Servicemembers’ Flexi-  
5       ble Educational Assistance Act”.

1 **SEC. 2. TRANSFER OF ENTITLEMENT TO BASIC EDU-**  
2 **CATIONAL ASSISTANCE.**

3 (a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSIST-  
4 ANCE PROGRAM.—Chapter 30 of title 38, United States  
5 Code, is amended—

6 (1) in the table of contents by striking the item  
7 relating to section 3020 and inserting the following:

“3020. Transfer of entitlement to basic educational assistance.”;

8 (2) in section 3018—

9 (A) in subsection (c) by inserting “or (e)”  
10 after “subsection (b)(1)”; and

11 (B) by adding at the end the following new  
12 subsection:

13 “(e) An individual who made an election under sec-  
14 tion 3011(c)(1) or 3012(d)(1) may withdraw such election  
15 not later than one year after the date of enactment of this  
16 subsection if—

17 “(1) the period described in section 3031 that  
18 is applicable to such individual has not expired; and

19 “(2) such individual elects to transfer entitle-  
20 ment to educational assistance under section 3020.”;

21 (3) by amending section 3020 to read as fol-  
22 lows:

1   **“§ 3020. Transfer of entitlement to basic educational**  
2                   **assistance**

3           “(a) IN GENERAL.—An individual who is entitled to  
4 basic educational assistance under this subchapter may  
5 elect to transfer to one or more of the dependents specified  
6 in subsection (b) a portion of such individual’s entitlement  
7 to such assistance. An individual transferring entitlement  
8 under this section shall submit written notice to the Sec-  
9 retary concerned not later than the expiration date of the  
10 period described in section 3031 that is applicable to such  
11 individual.

12          “(b) ELIGIBLE DEPENDENTS.—An individual may  
13 transfer entitlement under this section as follows:

14               “(1) To the individual’s spouse.

15               “(2) To one or more of the individual’s chil-  
16 dren.

17               “(3) To a combination of the individuals re-  
18 ferred to in paragraphs (1) and (2).

19          “(c) DESIGNATION OF TRANSFEREE.—An individual  
20 transferring entitlement under this section shall—

21               “(1) designate the dependent or dependents to  
22 whom such entitlement is being transferred;

23               “(2) designate the number of months of such  
24 entitlement to be transferred to each such depend-  
25 ent; and

1           “(3) specify the period for which the transfer  
2           shall be effective for each such dependent.

3           “(d) REVOCATION AND MODIFICATION.—An indi-  
4           vidual transferring entitlement under this section may  
5           modify or revoke at any time the transfer of any unused  
6           portion of the entitlement so transferred. The modification  
7           or revocation of the transfer of entitlement under this sub-  
8           section shall be made by the submittal of written notice  
9           of the action to both the Secretary concerned and the Sec-  
10          retary of Veterans Affairs.

11          “(e) COMMENCEMENT OF USE.—If the dependent to  
12          whom entitlement is transferred under this section is a  
13          child, the use of the transferred entitlement may not com-  
14          mence until the child—

15               “(1) completes the requirements of a secondary  
16          school diploma (or equivalency certificate); or

17               “(2) attains 18 years of age.

18          “(f) TIME LIMITATION FOR USE OF ELIGIBILITY  
19          AND ENTITLEMENT.—Notwithstanding section 3031, and  
20          subject to subsection (c)(3), a dependent to whom entitle-  
21          ment is transferred under this section may use such enti-  
22          tlement not later than the expiration date of a 20-year  
23          period beginning on the commencement date of the period  
24          described in section 3031 that is applicable to the indi-  
25          vidual who transferred such entitlement to the dependent.

1 “(g) ADDITIONAL ADMINISTRATIVE MATTERS.—(1)

2 The use of any entitlement transferred under this section  
3 shall be charged against the entitlement of the individual  
4 making the transfer at the rate of one month for each  
5 month of transferred entitlement that is used.

6 “(2) Except as provided under subsections (c)(2) and  
7 (3) and (f), and subject to paragraph (5) of this sub-  
8 section, a dependent to whom entitlement is transferred  
9 under this section is entitled to basic educational assist-  
10 ance under this subchapter in the same manner as the  
11 individual from whom entitlement was transferred.

12 “(3)(A) Subject to subparagraph (B), the monthly  
13 rate of educational assistance payable to a dependent to  
14 whom entitlement is transferred under this section shall  
15 be the monthly amount payable under sections 3015 and  
16 3022 to the individual making the transfer.

17 “(B) The monthly rate of assistance payable to a de-  
18 pendent under subparagraph (A) shall be subject to the  
19 provisions of section 3032, except that the provisions of  
20 subsection (a)(1) of that section shall not apply even if  
21 the individual making the transfer to the dependent under  
22 this section is on active duty during all or any part of  
23 enrollment period of the dependent in which such entitle-  
24 ment is used.

1       “(4) The death of an individual transferring entitle-  
2 ment under this section shall not affect the use of the  
3 transferred entitlement by the dependent to whom entitle-  
4 ment is transferred.

5       “(5) Notwithstanding subsection (f) and section  
6 3031, a child to whom entitlement is transferred under  
7 this section may not use any entitlement so transferred  
8 after attaining the age of 26 years.

9       “(6) Except as provided in subsection (e), the pur-  
10 poses for which a dependent to whom entitlement is trans-  
11 ferred under this section may use such entitlement shall  
12 include the pursuit and completion of the requirements of  
13 a secondary school diploma (or equivalency certificate).

14       “(h) OVERPAYMENT.—In the event of an overpay-  
15 ment of basic educational assistance with respect to a de-  
16 pendent to whom entitlement is transferred under this sec-  
17 tion, the dependent and the individual making the transfer  
18 shall be jointly and severally liable to the United States  
19 for the amount of the overpayment for purposes of section  
20 3685.

21       “(i) REGULATIONS.—The Secretaries concerned shall  
22 prescribe regulations for purposes of this section.

23       “(j) ANNUAL REPORT.—Not later than January 31  
24 of each calendar year (beginning in 2006), the Secretary  
25 of Defense, in consultation with the other Secretaries con-

cerned, shall submit to the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate a report on the number of individuals transferring entitlement to educational assistance under this section during the preceding fiscal year.

“(k) SECRETARY CONCERNED DEFINED.—Notwithstanding section 101(25), in this section the term ‘Secretary concerned’ means—

“(1) the Secretary of the Army with respect to matters concerning the Army;

“(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

“(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

“(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.”; and

(4) in section 3031(a) by inserting “in section 3020 and” after “Except as provided”.

(b) EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE.—Chapter 1606 of title 10, United States Code, is amended—

1 (1) in the table of sections by adding at the end  
 2 the following new item:

“16138. Transfer of entitlement to educational assistance.”;

3 (2) in section 16133(a) by inserting “and sec-  
 4 tion 16138” after “subsection (b)”;

5 (3) in section 16137 by inserting “Each such  
 6 report shall also include the number of members of  
 7 the Selected Reserve of the Ready Reserve of each  
 8 armed force transferring entitlement to educational  
 9 assistance under section 16138.” after “those fiscal  
 10 years.”; and

11 (4) by adding at the end the following new sec-  
 12 tion:

13 **“§ 16138. Transfer of entitlement to educational as-**  
 14 **sistance**

15 “(a) IN GENERAL.—An individual who is entitled to  
 16 educational assistance under this chapter may elect to  
 17 transfer to one or more of the dependents specified in sub-  
 18 section (b) a portion of such individual’s entitlement to  
 19 such assistance. An individual transferring entitlement  
 20 under this section shall submit written notice to the Sec-  
 21 retary concerned not later than the expiration date of the  
 22 period described in section 16133 that is applicable to  
 23 such individual.

24 “(b) ELIGIBLE DEPENDENTS.—An individual may  
 25 transfer entitlement under this section as follows:



1           “(1) To the individual’s spouse.

2           “(2) To one or more of the individual’s chil-  
3       dren.

4           “(3) To a combination of the individuals re-  
5       ferred to in paragraphs (1) and (2).

6       “(c) DESIGNATION OF TRANSFEREE.—An individual  
7       transferring entitlement under this section shall—

8           “(1) designate the dependent or dependents to  
9       whom such entitlement is being transferred;

10          “(2) designate the number of months of such  
11       entitlement to be transferred to each such depend-  
12       ent; and

13          “(3) specify the period for which the transfer  
14       shall be effective for each such dependent.

15       “(d) REVOCATION AND MODIFICATION.—An indi-  
16       vidual transferring entitlement under this section may  
17       modify or revoke at any time the transfer of any unused  
18       portion of the entitlement so transferred. The modification  
19       or revocation of the transfer of entitlement under this sub-  
20       section shall be made by the submittal of written notice  
21       of the action to both the Secretary concerned and the Sec-  
22       retary of Veterans Affairs.

23       “(e) COMMENCEMENT OF USE.—If the dependent to  
24       whom entitlement is transferred under this section is a

1 child, the use of the transferred entitlement may not com-  
2 mence until the child—

3 “(1) completes the requirements of a secondary  
4 school diploma (or equivalency certificate); or

5 “(2) attains 18 years of age.

6 “(f) TIME LIMITATION FOR USE OF ELIGIBILITY  
7 AND ENTITLEMENT.—Notwithstanding section 16133,  
8 and subject to subsection (c)(3), a dependent to whom en-  
9 titlement is transferred under this section may use such  
10 entitlement not later than—

11 “(1) the expiration date of a 20-year period be-  
12 ginning on the commencement date of the period  
13 prescribed by section 16133(a)(1) that is applicable  
14 to the individual who transferred such entitlement to  
15 the dependent; or

16 “(2) the date that is 10 years after the date the  
17 individual who transferred such entitlement to the  
18 dependent is separated from the Selected Reserve,  
19 whichever occurs first.

20 “(g) ADDITIONAL ADMINISTRATIVE MATTERS.—(1)  
21 The use of any entitlement transferred under this section  
22 shall be charged against the entitlement of the individual  
23 making the transfer at the rate of one month for each  
24 month of transferred entitlement that is used.

1       “(2) Except as provided under subsections (c)(2) and  
2 (3) and (f), and subject to paragraph (5) of this sub-  
3 section, a dependent to whom entitlement is transferred  
4 under this section is entitled to educational assistance  
5 under this chapter in the same manner as the individual  
6 from whom entitlement was transferred.

7       “(3) The monthly rate of educational assistance pay-  
8 able to a dependent to whom entitlement is transferred  
9 under this section shall be the monthly amount payable  
10 under section 16131 to the individual making the transfer.

11       “(4) The death of an individual transferring entitle-  
12 ment under this section shall not affect the use of the  
13 transferred entitlement by the dependent to whom entitle-  
14 ment is transferred.

15       “(5) Notwithstanding subsection (f) and section  
16 16133, a child to whom entitlement is transferred under  
17 this section may not use any entitlement so transferred  
18 after attaining the age of 26 years.

19       “(6) Except as provided in subsection (e), the pur-  
20 poses for which a dependent to whom entitlement is trans-  
21 ferred under this section may use such entitlement shall  
22 include the pursuit and completion of the requirements of  
23 a secondary school diploma (or equivalency certificate).

24       “(h) OVERPAYMENT.—In the event of an overpay-  
25 ment of basic educational assistance with respect to a de-

1 pendent to whom entitlement is transferred under this sec-  
2 tion, the dependent and the individual making the transfer  
3 shall be jointly and severally liable to the United States  
4 for the amount of the overpayment for purposes of section  
5 3685 of title 38.

6 “(i) REGULATIONS.—The Secretaries concerned shall  
7 prescribe regulations for purposes of this section.

8 “(j) SECRETARY CONCERNED DEFINED.—Notwith-  
9 standing section 101(a)(9), in this section the term ‘Sec-  
10 retary concerned’ means—

11 “(1) the Secretary of the Army with respect to  
12 matters concerning the Army;

13 “(2) the Secretary of the Navy with respect to  
14 matters concerning the Navy or the Marine Corps;

15 “(3) the Secretary of the Air Force with respect  
16 to matters concerning the Air Force; and

17 “(4) the Secretary of Defense with respect to  
18 matters concerning the Coast Guard, or the Sec-  
19 retary of Homeland Security when it is not oper-  
20 ating as a service in the Navy.”.

21 **SEC. 3. PROGRAM OF EDUCATION.**

22 (a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSIST-  
23 ANCE PROGRAM.—Chapter 30 of title 38, United States  
24 Code, is amended—

1 (1) in section 3014(a) by striking “an approved  
2 program of education” and inserting “a program of  
3 education of the individual’s choosing”; and

4 (2) in sections 3014A(b)(1), 3015(a)(1),  
5 3015(a)(2), 3015(b)(1), 3015(b)(2), 3015(g)(1),  
6 3015(g)(2), 3016(b), 3016(c), 3022(a)(1),  
7 3022(a)(2), and 3034(a)(3) by striking “an ap-  
8 proved program” each place it appears and inserting  
9 “a program”.

10 (b) EDUCATIONAL ASSISTANCE FOR MEMBERS OF  
11 THE SELECTED RESERVE.—Section 16131 of title 10,  
12 United States Code, is amended—

13 (1) in subsection (b)(1) by inserting “of the  
14 person’s choosing” after “pursuing a program of  
15 education”;

16 (2) by amending subsection (c)(1) to read as  
17 follows:

18 “(c)(1) Educational assistance shall be provided to  
19 each person entitled to educational assistance under this  
20 chapter for pursuit of any program of education of the  
21 person’s choosing that is a program of education for pur-  
22 poses of chapter 30 of title 38.”; and

23 (3) in subsection (g)(2)(B)(i) by striking “an  
24 approved program” and inserting “a program”.

1 **SEC. 4. SERVICE IN THE SELECTED RESERVE.**

2 (a) CREDIT FOR 24 MONTHS OF ACTIVE DUTY SERV-  
3 ICE.—Subsection 3012 of title 38, United States Code, is  
4 amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)(A)(i) by striking “an  
7 obligated period” and all that follows through  
8 “in the Armed Forces” and inserting “for a cu-  
9 mulative period of at least 24 months of obli-  
10 gated active duty in the Armed Forces during  
11 any 6-year period”;

12 (B) in paragraphs (1)(B)(i) and  
13 (1)(C)(iii)(I) by striking “at least two years of  
14 continuous active duty in the Armed Forces”  
15 each place it appears and inserting “for a cu-  
16 mulative period of at least 24 months of active  
17 duty in the Armed Forces during any 6-year  
18 period”; and

19 (C) in paragraphs (1)(B)(ii) and  
20 (1)(C)(iii)(II) by striking “two years” each  
21 place it appears and inserting “24 months”;  
22 and

23 (2) in subsection (b)(1)(A)—

24 (A) by striking “two years of service” and  
25 inserting “24 months of service”; and

1 (B) by striking “during such two years”  
2 and inserting “during such service”.

3 (b) CONFORMING AMENDMENT.—Section 3013(b) of  
4 title 38, United States Code, is amended by striking “con-  
5 tinuous”.

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